

DEPARTMENT OF TAXATION AND FINANCE

MEMORANDUM

TO: Mr. Rook

OFFICE Corporation Tax

FROM: Mr. Doran

DATE April 21, 1970

SUBJECT: Thico Plan, Inc.

Attached is the hearing file and a proposed decision in the above matter for 1964 and 1965.

After your review, please send the file to the Tax Commission for consideration.

According to our understanding, you will retain one signed copy for the files of the Tax Commission and will return one signed copy and three unsigned copies to us for distribution.



Director

Att: Hearing File

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

THICO PLAN, INC.

For Redetermination of Deficiency
or for Refund of Franchise Tax
under Article 9-A of the Tax Law
for 1964 and 1965

Thico Plan, Inc., having filed a petition for redetermination of deficiency or for refund of franchise tax under Article 9-A of the Tax Law for 1964 and 1965, and a hearing having been held in connection therewith at the office of the State Tax Commission in New York City on June 27, 1969 before John J. Genevich, Hearing Officer of the Department of Taxation and Finance, at which hearing E. M. Cameron III, Secretary, and T. Hokanson, Corporate Accountant of the taxpayer appeared personally and testified, together with James S. Little, Esq. and Walter F. Pease, Esq., of Counsel, and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) That the taxpayer was incorporated in Delaware on May 9, 1958 and has been authorized in New York State since November 10, 1958;

(2) That on the basis of reports filed and additional information submitted, statements of audit adjustment were issued on April 15, 1968 as follows, exclusive of interest:

1964

Average total assets	\$16,280,992.00
Less average current liabilities	1,208,502.00
Adjusted total capital	15,072,490.00
Business allocation percentage as reported	40.85%
Allocated total capital	6,157,112.00
Tax at one mill	6,157.11
Tax paid	2,044.80
Tax deficiency	\$ 4,112.31

The amount of average current liabilities shown above was computed as follows:

	<u>1/1/64</u>	<u>12/31/64</u>	
Accounts payable	\$571,103	\$ 490,249	
Accrued interest	87,714	67,938	
Notes payable	- 0 -	1,200,000	
Total	658,817	\$1,758,187	
Sum of beginning and end of the year			\$2,417,004
Average for year (1/2 of 2,417,004)			\$1,208,502

1965

Average total assets	\$16,605,909.00
Less average current liabilities	6,093,057.00
Adjusted total capital	\$10,512,852.00
Business allocation percentage as reported	73.87%
Allocated total capital	7,765,844.00
Tax at one mill	7,765.84
Tax paid	- 0 -
Tax deficiency	\$ 7,765.84

The amount of average current liabilities shown above was computed as follows:

	<u>1/1/65</u>	<u>12/31/65</u>	
Accounts payable	\$490,249	\$1,333,656	
Accrued interest	67,938	94,272	
Notes payable	1,200,000	9,000,000	
Total	\$1,758,187	\$10,427,928	
Sum of beginning and end of the year			\$12,186,115
Average for year (1/2 of 12,186,115)			6,093,057

(3) That notices of deficiency were issued on June 17, 1968 and timely petitions for redetermination were filed.

(4) That the taxpayer is engaged in the business of financing insurance premium payments; funds are borrowed from various banks on interest bearing notes which are payable within 90 days; a great number of the notes are renewed at the expiration of the original 90 days, that is, a new 90-day

note at the then prevailing prime interest rate is given to the bank to replace the note which is expiring; in many instances the original note is renewed a sufficient number of times so that when payment is finally made, the loan based on the original note has been outstanding for more than a year.

(5) That section 208.7 of the Tax Law reads, in part, as follows:

"The term 'business capital' means all assets, other than subsidiary capital, investment capital and stock issued by the taxpayer, less liabilities * * * which are payable by their terms on demand or within one year from the date incurred, other than loans or advances outstanding for more than a year as of any date during the year covered by the report * * *"

Section 3.32 of Ruling of the State Tax Commission reads, in part, as follows:

"b. Liabilities so deductible include notes, accounts payable, wages payable, accrued taxes, expenses and interest. Notes and other written obligations payable by their terms on demand or not more than one year from their date, which are regularly renewed from year to year, are not deductible in computing business capital. Loans or advances outstanding for more than a year as of any date during the year covered by the report, are not deductible in computing business capital."

(6) That the notices of deficiency for both years reflected an understatement of the amount of average current liabilities deductible in computing capital, because of failure to include some notes which were outstanding for less than a year from the date originally incurred.

Credit for tax paid on the notice of deficiency for 1964 was overstated by \$628.63, which amount should have been credited to 1965.

Based upon the foregoing findings and all of the evidence presented, the State Tax Commission hereby

DECIDES:

(A) That the taxpayer, pursuant to (5) above, is not entitled to deduct as current liabilities those renewal notes which cause the original notes to be outstanding for more than a year as of any date during the year covered by the report.

(B) That correction of the errors indicated at (6) above results in recomputed tax deficiencies as follows:

1964

Average total assets	\$16,280,992.00
Less average current liabilities (Appendix A)	6,783,502.00
Recomputed capital	9,497,490.00
Business allocation percentage as reported	40.85%
Allocated capital	3,879,724.00
Tax at one mill	3,879.72
Tax paid	1,416.17
Recomputed tax deficiency	\$ 2,463.55

1965

Average total assets	\$16,605,909.00
Less average current liabilities (Appendix A)	7,018,058.00
Recomputed capital	9,587,851.00
Business allocation percentage as reported	73.87%
Allocated capital	7,082,546.00
Tax at one mill	7,082.55
Tax paid	628.63
Recomputed tax deficiency	\$ 6,453.92

(C) That the recomputed tax deficiencies above are affirmed with such interest as may lawfully be due under Section 1084 of the Tax Law.

Dated: Albany, New York

this 26th day of May, 1970

STATE TAX COMMISSION


President


Commissioner


Commissioner

APPENDIX A

THICO PLAN, INC.

1964

Current Liabilities
Deductible

		<u>1/1/64</u>	<u>12/31/64</u>
Accounts payable		571,103	490,249
Accrued Interest		87,714	67,938
Notes Payable:	Date		
	<u>Originally</u>	<u>Date</u>	
	<u>Incurred</u>	<u>Paid</u>	
	1/14/64		200,000
	4/21/64		300,000
	11/4/63	8/14/64	125,000
	11/11/63	8/11/64	350,000
	11/25/63	8/25/64	425,000
	11/25/63	5/26/64	125,000
	12/10/63	11/19/64	2,875,000
	9/10/63	9/8/64	350,000
	12/17/63	11/19/64	300,000
	12/25/63	9/22/64	250,000
	6/23/64		200,000
	12/15/64		500,000
	12/22/64		6,350,000
Total Current Liabilities		<u>3,458,817</u>	<u>8,108,187</u>
Total of beginning and end of the year			<u>13,567,004</u>
Average Current Liabilities (1/2 of 13,567,004)			6,783,502

1965

		<u>1/1/65</u>	<u>12/31/65</u>
Accounts payable		490,249	1,333,656
Accrued Interest		67,938	94,272
Notes Payable:	4/21/64	2/16/65	300,000
	6/23/64	2/16/65	200,000
	12/15/64	9/14/65	200,000
	12/22/64	11/22/65	2,350,000
	2/16/65		4,400,000
	11/9/65		200,000
	11/22/65		1,000,000
	11/22/65		1,000,000
	12/7/65		2,000,000
	12/7/65		400,000
Total Current Liabilities		<u>3,608,187</u>	<u>10,427,928</u>
Total of beginning and end of the year			<u>14,036,115</u>
Average Current Liabilities (1/2 of 14,036,115)			7,018,058